

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
FEB 22 2000
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Revision of the Commission's
Rules to Ensure Compatibility
with Enhanced 911 Emergency
Calling Systems

)
)
) CC Docket No. 94-102
)
)

To: The Commission

**OPPOSITION OF APCO
TO PETITIONS FOR RECONSIDERATION
OF *THIRD REPORT AND ORDER***

The Association of Public-Safety Communications Officials-International, Inc. ("APCO") hereby submits the following Opposition to the Petitions filed on December 6, 1999, by Aerial Communications, Inc. ("Aerial"), Nokia Inc. and Motorola, Inc. ("Nokia/Motorola"), and Sprint Spectrum, L.P., d/b/a Sprint PCS ("Sprint"), seeking reconsideration of the Commission's *Third Report and Order* FCC 99-245 (released October 6, 1999) in the above-captioned proceeding.

APCO is the nation's oldest and largest public safety communications organization. Most of APCO's 13,000 individual members are state or local government employees who manage and operate police, fire, emergency medical, forestry conservation, highway maintenance, disaster relief, and other communications systems, including Public Safety Answering Points (PSAPs), that protect the safety of life, health and property.

The *Third Report and Order*, concerning Phase II technology options and revised implementation deadlines, combined with the more recent *Second Memorandum Opinion*

No. of Copies rec'd
List A B C D E

0 + 9

and Order, regarding cost-recovery, have finally opened the door for meaningful progress towards full wireless Enhanced 9-1-1 capability across the nation. At long last, the focus of attention can shift from the regulatory arena to complex implementation issues with the guidance of carefully crafted rules. Unfortunately, Petitioners Aerial, Nokia/Motorola, and Sprint remain unsatisfied, and they are insisting to varying degrees that the Commission reopen this matter and modify its rules. APCO disagrees, and believes that the Commission should swiftly dismiss these petitions to eliminate any uncertainty and encourage rapid implementation of the current rules by carriers, manufacturers, and PSAPs.

Nokia/Motorola

These two manufacturers of cellular telephones seek partial reconsideration of the implementation dates adopted in the *Third Report and Order*. First, they ask the Commission to eliminate the requirement that carriers choosing handset-based solutions begin deployment of ALI-capable handsets by March 1, 2001. To support such a change, Nokia/Motorola argue that most PSAPs will not be prepared to accept and process Phase II information by that date. However, the Commission recognized in the *Third Report and Order*, at ¶ 41, that there would be a substantial public benefit to such an early deployment:

The requirements that ALI-capable handsets begin to be sold before both October 1, 2001, and before any PSAP request will ensure that handsets are available to customers, particularly customers who might use the handsets while roaming in areas served by carriers and PSAPs that have upgraded to Phase II. Moreover, we expect that the phase-in schedule will spur other ALI-based services and create an awareness and constituency for Phase II E911. Early introduction is also likely to lead to reduced ALI costs over time as a result of competition, economies of scale, and technological improvements.

The Commission also explained that early deployment will “spur efforts by PSAPs and other necessary participants to implement Phase II” and “spur competition between and among carriers and technologies, as customers become aware of the availability of the ALI feature.” *Third Report and Order* at ¶44. Nokia/Motorola provide nothing in their Petition to justify modification of the March 1, 2001, date, other than to call it an “extraordinary burden.” However, that does not even begin to counter the substantial public benefits of holding to that date.

Nokia/Motorola also ask the Commission to change the other implementation dates, beginning with October 1, 2001. Specifically, Nokia/Motorola would cut the handset deployment requirements in half, by requiring that only 25% of handsets activated by October 1, 2001, to be ALI-capable (rather than 50%), and that only 50% be ALI-capable October 1, 2002 (rather than 95%). Carriers would not be required to reach the 95% level until October 1, 2004, two years later than currently required. APCO strongly opposes these proposed changes, the impact of which would be compounded for many years. Once deployment of ALI-capable handsets begins, every new handset deployed without ALI-capability represents a missed opportunity to provide E9-1-1 service to a subscriber for several years, until that subscriber replaces their new handset. The sooner there is comprehensive deployment of ALI-capable handsets, the sooner we will reach the point of complete Phase II implementation.

APCO recognizes the need to balance equipment cost and availability with early E9-1-1 deployment. However, the Commission found that balance in the *Third Report and Order*, based upon a thorough record that includes a public hearing and voluminous

written submissions. Nothing in the Motorola/Nokia petition provides factual information sufficient evidence to alter that balance.

Aerial Communications, Inc.

Aerial challenges the Commission revision of the accuracy requirements for handset-based technologies. APCO opposes Aerial's request, as higher accuracy levels imposed in the *Third Report and Order* are essential for there to be effective Phase II location capability. Contrary to Aerial's suggestion, the Commission based its decision on a thorough record that included a public hearing, test data, and voluminous written submissions.

Sprint PCS

Sprint, the only major wireless carrier seeking reconsideration of the *Third Report and Order*, now claims that neither "handset" nor "network" approaches are viable wireless E9-1-1 solutions, at least for CDMA carriers. Thus, Sprint urges the Commission to permit it to implement a vague, untested, "hybrid" software-based approach, but without any firm deadlines for implementation.

Sprint argues that significant questions remain as to whether network-based solutions will work with CDMA cellular systems, a fact acknowledged by the Commission in the *Third Report and Order*.¹ Indeed, it was partly because of those technical concerns that the Commission provided carriers with the flexibility to select a handset-based solution.

¹ See *Third Report and Order* at ¶¶ 26-27.

However, Sprint also rejects the handset option. Sprint's principal argument is that the Commission's rules will effectively require that all handsets sold after October 1, 2001, be ALI-capable, as it will be difficult to distinguish between subscribers based upon whether or not "their" PSAP has requested Phase II data. First, APCO acknowledges that the Commission's rules are not well-defined regarding deployment of ALI-capable handsets based upon PSAP requests.² However, that is not a reason to scrap the Phase II deployment schedules altogether, as Sprint (alone among major carriers) appears to advocate. Carriers have highly sophisticated marketing and customer tracking tools that should make it possible to distinguish among subscribers based on a variety of factors, including whether the relevant PSAP has requested E9-1-1 data.

In any event, carriers do have the alternative of providing only ALI-capable handsets by October 1, 2001, which would have the significant public benefit of encouraging more rapid Phase II implementation. While that may have some limited impact on handset pricing, it could actually reduce costs as carriers would be in a position to obtain more substantial volume discounts for ALI capable handsets. Furthermore, equipment manufacturers will quickly reach the point at which ALI-capability becomes a standard feature as it will be cheaper to include it in all handsets than only some handsets.

Even assuming *arguendo* that Sprint's assessment of the impact of the October 1, 2001, date is valid, it hardly supports Sprint's preferred alternative, which rests upon an untested "hybrid" software-based solution. This "solution" sounds more like "vaporware" than software, as it has yet even to leave the laboratory. Indeed, there is no

² APCO had suggested that a carrier be subject to certain deployment deadlines as soon as there is at least one PSAP in the carrier's territory requesting Phase II information. *See* Reply Comments of APCO on Wireless E911 Phase II Automatic Location Identification Requirements, filed July 2, 1999.

certainty that the technology will work at all, let alone provide accuracy comparable to the current Phase II requirements. All that Sprint is able to promise is that it will use its "best efforts" to install "by October 2001 if possible" a technology that has "not been thoroughly tested" and provides only a "reasonable degree" of accuracy.³ In contrast, the current Phase II rules for both handset-based and network-based approaches include firm deployment deadlines and very specific accuracy requirements. Other carriers (including CDMA carriers) appear to be willing and able to comply with these requirements (if not enthusiastically, at least with a recognition that compliance is feasible), and there is no reason at this late date to allow Sprint to delay Phase II deployment any further based on its vague, untested, and uncertain hybrid solution.⁴

³ To the extent that Sprint indicates any target accuracy level, it is 300 meters, well beyond even the original 125 meter Phase II requirement for network solutions, let alone the far more accurate requirements that now apply for both handset and network solutions.

⁴ Sprint also suggests in a footnote that the Commission is engaging in an unconstitutional "taking" in requiring that carriers use "reasonable efforts" to reach certain penetration levels of ALI-capable handsets among their subscribers. Such efforts may, or may not, require carriers to subsidize handset replacements at all, let alone faster than would normally occur in the highly competitive wireless marketplace. Thus, the Commission's rule hardly rises to the level of a "taking," especially as the rule "substantially advances[s] legitimate interests" of protecting the safety of life, health, and property. *U.S. v. Riverside Bayview Homes*, 474 U.S. 121, 126 (1985), citing *Hodel v. Virginia Surface Mining & Reclamation Assn.*, 452 U.S. 264, 293-297 (1981). The public safety benefits of wireless E9-1-1 capability are well-documented in this proceeding, and are reflected in recent legislation (S.800, the 911 Act of 1999).

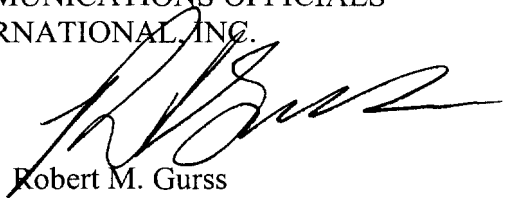
CONCLUSION

For the reasons set forth above, the Commission should quickly dismiss the petitions for reconsideration of Nokia/Motorola, Aerial, and Sprint.

Respectfully submitted,

ASSOCIATION OF PUBLIC-SAFETY
COMMUNICATIONS OFFICIALS-
INTERNATIONAL, INC.

By:



Robert M. Gurss
SHOOK, HARDY, & BACON, L.L.P.
600 14TH Street, N.W. #800
Washington, D.C. 20005
(202) 662-4856

Its Attorney

February 22, 2000

Doc34032

CERTIFICATE OF SERVICE

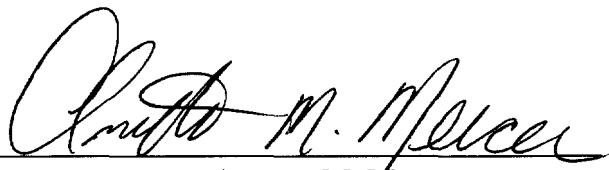
I, Annette M. Mercer, do hereby certify that on this 22nd day of February, 2000, that I have served a copy of the foregoing document via U.S. Mail, postage pre-paid, to the following:

Jonathan Chambers
Sprint PCS
1801 K Street, NW
Suite M112
Washington, DC 20006

Brian O'Connor, Esq.
Aerial Communications
8410 West Bryn Mawr
Suite 1100
Chicago, IL 60631

Leo Fitzsimon, Esq.
Nokia, Inc.
1110 Connecticut Avenue, NW
Suite 920
Washington, DC 20036

Mary Brooner
Motorola, Inc.
1350 I Street, NW
Suite 400
Washington, DC 20005



Annette M. Mercer